S. HRG. 98-93

NOMINATION OF STEPHEN F. EILPERIN

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF STEPHEN F. EILPERIN TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

MAY 17, 1983

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

21-316 O WASHINGTON: 1983

S401-46

COMMITTEE ON GOVERNMENTAL AFFAIRS

WILLIAM V. ROTH, JR., Delaware, *Chairman*

CHARLES H. PERCY, Illinois
TED STEVENS, Alaska
CHARLES McC. MATHIAS, JR., Maryland
WILLIAM S. COHEN, Maine
DAVID DURENBERGER, Minnesota
WARREN B. RUDMAN, New Hampshire
JOHN C. DANFORTH, Missouri
THAD COCHRAN, Mississippi
WILLIAM L. ARMSTRONG, Colorado

THOMAS F. EAGLETON, Missouri
HENRY M. JACKSON, Washington
LAWTON CHILES, Florida
SAM NUNN, Georgia
JOHN GLENN, Ohio
JIM SASSER, Tennessee
CARL LEVIN, Michigan
JEFF BINGAMAN, New Mexico

JOAN M. MCENTEE, *Staff Director and Chief Counsel*
MARGARET HECHT, *Professional Staff Member*
IRA S. SHAPIRO, *Minority Staff Director and Chief Counsel*
TERRY JOLLY, *Chief Clerk*

CONTENTS

Page

Opening statement of Senator Mathias 1

WITNESS

TUESDAY, MAY 17, 1983

Stephen F. Eilperin, nominee to be an associate judge of the Superior Court of the District of Columbia 6

Biographical information and responses to prehearing questions 1

NOMINATION OF STEPHEN F. EILPERIN

TUESDAY, MAY 17, 1983

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 2:57 p.m., in room S–205, the Capitol, Hon. Charles McC. Mathias, Jr., presiding

Present: Senator Mathias.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. We are here to take testimony on the nomination to the Superior Court of the District of Columbia. On April 18, President Reagan nominated you to be an associate judge of the Superior Court of the District of Columbia. And I want to thank you on behalf of the committee and the staff for your cooperation in going through all of the preliminaries. By preliminaries, I am referring to a very careful review which touches on your professional experience and your general background.

In 1978, the committee adopted rule 8 which contains a requirement that has to be met on all confirmations subject to committee evaluation. This rule requires that the committee conduct an inquiry into the nominee's experience, qualifications, suitability, and integrity. The committee believes that this rule insures a thorough, and yet we hope not an unreasonable, review of background and qualifications. I think it is appropriate to recite for the record the main points of this review.

First, the nominee was asked to forward detailed information on education, employment, and professional achievements, as well as complete financial statements. The financial statements and biographical information are available for inspection by the public in the committee offices. In addition, the biographical information will be placed in the record as a part of this hearing. That is so ordered at this time.

[The information referred to follows:]

BIOGRAPHICAL AND FINANCIAL INFORMATION

A. BIOGRAPHICAL INFORMATION

Question 1. Name: (Include any former names used.)
Answer. Stephen Francis Eilperin.
Question 2. Address: List current residence address and mailing address.
Answer. 2828 McKinley Place, N.W., Washignton, D.C. 20015.
Question 3. Date and Place of birth.
Answer. October 25, 1937, Brooklyn, N.Y.
Question 4. Marital status: (Include maiden name of wife or husband's name.)
Answer. Married on September 30, 1965 to Sophie Catherine Cook.

Question 5. Names and ages of children.

Answer. Michael Lawrence Eilperin, age 15; Juliet Katherine Eilperin, age 12.

Question 6. Education: List institution(s), dates attended, degree received and date degree granted.

Answer. (a) Bronx High School of Science, Bronx, N.Y., 1951–55; academic diploma, 1955.

(b) Columbia College, New York, N.Y., 1955–59; A.B. 1959.

(c) Harvard Law School, Cambridge, Mass., September 1959 to October 1959.

(d) Columbia Law School, New York, N.Y., 1960–63; LL.B. 1963.

Question 7. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Answer. (a) October 1959 to November 1959—Salesman, Brentanos, 586 Fifth Avenue, New York, N.Y.

(b) November 1959 to December 1959—Counselor, Wiltwyck School, Esopus, N.Y.

(c) June 1960 to September 1960—Clerk, Consolidated Mutual Insurance Co., Strongin Building, Brooklyn, N.Y.

(d) July 1962 to September 1962—law clerk Hays, Sklar & Herzberg, 200 Park Avenue, New York, N.Y. 10017.

(e) August 1963 to September 1963—law clerk, Hays, Sklar & Herzberg, 200 Park Avenue, New York, N.Y. 10017.

(f) 1963–1964; law clerk to Hon. Charles M. Metzner, United States District Court for the Southern District of New York.

(g) 1964–1966, Attorney, Civil Rights Division, Appellate Section, Department of Justice, Washington, D.C. 20530.

(h) 1966–1972, private practice with Kominers, Fort, Schlefer and Boyer, 1776 F. Street, N.W., Washington, D.C. 20006.

(i) 1972–1975, Attorney, later Assistant Section Chief, Civil Division, Appellate Section, Department of Justice, Washington, D.C. 20530.

Question 8. Government experience: List any experience in, or association with Federal, State or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Answer. (a) 1963–1964; law clerk to Hon. Charles M. Metzner, United States District Court for the Southern District of New York.

(b) 1964–1966, Attorney, Civil Rights Division, Appellate Section, Department of Justice, Washington, D.C. 20530.

(c) 1972–1975, Attorney, later Assistant Section Chief, Civil Division, Appellate Section, Department of Justice, Washington, D.C. 20530.

(d) 1975–1976, Assistant General Counsel, Nuclear Regulatory Commission, Washington, D.C. 20555.

(e) 1976–1981, Solicitor, Nuclear Regulatory Commission, Washington, D.C. 20555.

(f) 1981 to present, Administrative Judge and Member of the Atomic Safety and Licensing Appeal Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Question 9. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership or other business enterprise, educational, or other institution.

Answer. None.

Question 10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable and other organizations.

Answer. I am a member of the District of Columbia Bar.

Question 11. Political affiliations and activities: List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last ten years.

Answer. I am a registered Democrat. I have never been a candidate for or held political office, nor made any financial contributions or rendered other services to political parties or election campaign committees.

Question 12. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

Answer. (a) Editor, Columbia Law Review, 1961–1963; (b) Kent Scholar, Columbia Law School, 1961; (c) Presidential Pen for work on Voting Rights

Act of 1965; (d) Department of Justice Outstanding Performance Award, 1973; (e) Nuclear Regulatory Commission Distinguished Service Award, 1978; (f) Senior Executive Service Performance Award, 1980; (g) Presidential Rank of Meritorious Executive in the Senior Executive Service, 1981.

Question 13. Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Answer. I have written numerous Appeal Board decisions that appear in Volumes 14 through 17 of NRC Reports and have published legal articles on (a) Constitutional Law—Black Muslims in Prison: of Muslim Rites and Constitutional Rights, 62 Colum. L. Rev. 1488 (1962); (b) Jurisdiction—Protective Principle of Jurisdiction Applied to Uphold Statute Intended to have Extraterritorial Effect, 62 Colum. L. Rev. 371 (1972); and (c) Labor Law—Section 8(b)(4) of Amended Taft-Hartly Act Held to Forbid Union to Induce Any Supervisor to Boycott Primary Employer, 63 Colum. L. Rev. 749 (1963).

Question 14. Speeches. Provide the committee wih two copies of any formal speeches you have delivered during the last 5 years which you have written copies of and which are on topics relevant to the position for which you have been nominated.

Answer. I have delivered no formal speeches in the last 5 years.

Question 15. Selection: (a) Do you know why you were chosen for this nomination by the President? (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Answer. (a) Although I have not been informed of the President's precise reasons for my nomination, I understand that the selection was made on the basis of competence for the position.

(b) My professional career has been devoted almost entirely to litigation, both as an advocate and as a decision-maker. Immediately after law school, I served as law clerk to the Honorable Charles M. Metzner of the Southern District of New York. My year with Judge Metzner gave me a close working relationship with a distinguished trial judge, an early familiarity with trial practice, and an understanding of the kind of temperament and demeanor necessary to a trial judge.

As a staff attorney in the Civil Rights Division of the Department of Justice, I learned to appreciate the importance of diligence and excellence, and gained a recognition of the capacity of the judicial and legislative branches to profoundly affect the system of social and political justice in this country. These personal qualities, I think, are important ones for a judge on the District of Columbia Superior Court to possess. The court's heavy docket requires of a judge the willingness to work long hours with intense concentration. Such a person must also understand that he or she is there to do justice and that for those who appear before a Superior Court judge there are no small matters to be decided.

My work in private practice ,then again in the government with the Department of Justice and as the Nuclear Regulatory Commission's chief litigator, broadened my background and added to my experience. I ran the Nuclear Regulatory Commission's litigation office, supervised its staff, and handled complex cases at all levels of the federal court system. These experiences too should prove useful in handling a heavy docket and hearing and deciding complex cases in the D.C. Superior Court.

Finally for the past year and a half I have served as an administrative judge with the Nuclear Regulatory Commission. I am confident of my ability to decide contested cases fairly.

B. FINANCIAL INFORMATION (RETAINED IN COMMITTEE FILES)

C. FUTURE EMPLOYMENT RELATIONSHIPS

Question 1. Will you sever all connections with your present employer, business firms, business associations or business organizations if you are confirmed by the Senate?

Answer. Yes.

Question 2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Answer. No.

Question 3. Do you have any plans, commitments or agreements after completing Government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Answer. No.

Question 4. Has anybody made a commitment to employ your services in any capacity after you leave Government service?

Answer. No.

Question 5. If confirmed, do you expect to serve out your full term?

Answer. Yes.

D. POTENTIAL CONFLICTS OF INTEREST

Question 1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Answer. None.

Question 2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer. None.

Question 3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Answer. None.

Question 4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administraton and execution of law or public policy.

Answer. None.

Question 5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Answer. I do not forsee any potential conflict of interest. I would, of course, rescue myself from sitting on any case where a conflict of interest made it appropriate to do so.

Question 6. Do you agree to have written opinions provided to the committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Answer. Yes.

E. LEGAL MATTERS

Question 1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer. No.

Question 2. Have you ever been investigated, arrested, or charged or held by any federal, state or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance, other than a minor traffic offense. If so, provide details.

Answer. No.

Question 3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Answer. No.

Question 4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

Answer. No.

Question 5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Answer. I have no such additional information.

F. QUESTIONS CONCERNING STATUTORY QUALIFICATIONS, PURSUANT TO DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970, SEC. 11–1501(b) OF THE D.C. CODE AS AMENDED

Question 1. Are you a citizen of the United States?
Answer. Yes.
Question 2. Are you a member of the bar of the District of Columbia?
Answer. Yes.
Question 3. Have you been a member of the District of Columbia bar for at least 5 years? (Give year in which you became a member.)
Answer. Yes, 1967.
Question 4. If the answer to No. 3 is "no," (a) Are you a professor of law in a law school in the District of Columbia? (b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia? (c) Have you been eligible for membership in the bar of the District of Columbia for at least 5 years? (d) Upon what grounds is that eligibility based?
Answer. Not applicable.
Question 5. Are you a bona fide resident of the District of Columbia?
Answer. Yes.
Question 6. Please state the address of your actual place of abode (including temporary residences) with dates of occupancy for the last 5 years.
Answer. August 1968 to present date: 2828 McKinley Place, N.W., Washington, D.C. 20015.
Question 7. Have you maintained an actual place of abode in such area for at least 5 years?
Answer. Yes.
Question 8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?
Answer. No.
Question 9. Have you been a member of either Commission within the last 12 months?
Answer. No.

G. STATUS OF TAX LIABILITY

Question 1. Would you state for the record whether all your taxes, Federal, State and local, are current as of this date?
Answer. Yes.
Question 2. Are you or any of your immediate family presently involved in any controversy or litigation with tax authorities of the Federal government, the District of Columbia, state or local governments?
Answer. No.
Question 3. Have you or any member of your immediate family ever been involved in such controversy or litigation at any time in the past with any Federal, eral, District of Columbia, state or local governments?
Answer. No.
Question 4. Have any tax liens, either Federal, District, State or local been filed against you or against any real property or personal property which you own either individually, jointly, or in partnership?
Answer. No.
Question 5. Have your taxes always been paid on time?
Answer. Yes.

AFFIDAVIT

I, Stephen Francis Eilperin, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.
April 29, 1983.

STEPHEN FRANCIS EILPERIN.

Sworn to before me this 29th day of April 1983:

BARBARA A. TOMPKINS,
Notary.

My Commission Expires July 1, 19—.

Senator MATHIAS. The committee has reviewed the nominee's biographical and financial information as well as a report submitted by the Office of Judicial Ethics. Following that, it was my responsibility

to review the FBI report, which has also been reviewed by the ranking minority member, the Senator from Missouri, Mr. Eagleton.

And finally, the nominee was individually interviewed by designated committee staff members, who then submitted reports to members of the committee containing all of the relevant information concerning qualifications.

So, at this time, I will ask the nominee to take the oath for any statement that you will now make before the committee.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. EILPERIN. I do.

Senator MATHIAS. Do you have any statement that you would like to make at this time?

TESTIMONY OF STEPHEN F. EILPERIN, NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. EILPERIN. I have no prepared statement, Senator Mathias. However, I would be happy to answer whatever questions you might have.

Senator MATHIAS. First, I would like to welcome your family today: your wife, Sophie; your children, Michael and Juliet; and Mrs. Maria Cook, your mother-in-law.

It is a pleasure to have you here. I think you are fortunate, Mr. Eilperin, to be supported by your family, whom we are happy to welcome to the committee today.

Now, let me ask you a few brief questions, and if they seem personal, let me assure you these are standard questions which we address to all judicial nominees.

Is there anything of which you are aware in your background, either professional or personal, which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. EILPERIN. No; I don't think so, Senator.

Senator MATHIAS. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging your duties as a judge in the court to which you have been nominated?

Mr. EILPERIN. I do not.

Senator MATHIAS. If confirmed by the Senate, would it be your intention insofar as you can see in the future to serve the full 15-year term of office?

Mr. EILPERIN. I have wanted to be a judge ever since I clerked for Judge Charles Metzner of the U.S. District Court for the Southern District of New York after graduating law school. I am very enthusiastic about the prospect of serving on the superior court, if the Senate confirms me. So I certainly intend to serve the full 15-year term.

Senator MATHIAS. Have you ever been involved in civil litigation or administrative or legislative proceedings of any kind either as plaintiff, defendant, respondent, witness, or party in interest which is directly or indirectly related to the office to which you are nominated?

Mr. EILPERIN. No; I have not.

Senator MATHIAS. Have you or any member of your immediate family ever been involved in any controversy or litigation with the tax authorities with the Federal Government, the District of Columbia, or any State or local government?

Mr. EILPERIN. We have not, Senator.

Senator MATHIAS. And you have no unpaid tax liability?

Mr. EILPERIN. No; I have paid all of my taxes, Senator.

Senator MATHIAS. How would you propose to resolve any potential conflict of interest that might arise during your tenure on the bench?

Mr. EILPERIN. I don't foresee any arising, but certainly if there were any potential conflict, I would recuse myself from whatever case necessitated that action.

Senator MATHIAS. Could you state for the record something of your educational experience, your employment experience, and highlight for the committee those points that you think qualify you to be a judge in the Superior Court of the District of Columbia?

Mr. EILPERIN. Certainly, Mr. Chairman.

I am a graduate of Columbia College and Columbia Law School, where I was editor of the Law Review. Immediately after graduation, I had the privilege of serving as law clerk to Judge Charles Metzner of the Southern District of New York. Judge Metzner is a wonderful judge and person. It was an immensely satisfying experience to work with a judge of his character and temperament.

After my clerkship with Judge Metzner, I came to Washington, D.C., in pursuit both of my wife-to-be and of a job with the Department of Justice in the Civil Rights Division. I had success with both. I worked for 2 years during the heydey of the civil rights movement in the Civil Rights Division with Harold Greene, later chief judge of the superior court, and now perhaps one of the most distinguished Federal district court judges in the United States, as I am sure you are aware. That experience with Judge Greene and with John Doar gave me a full appreciation of the dedication needed to do a job well, the kind of devotion that one should have to a job, and the importance of the system of justice for this country.

I might say, parenthetically, I take great pleasure that this hearing is on May 17, the 29th anniversary of the Supreme Court's decision in *Brown* v. *Board of Education*. That is another reason for me to celebrate this day.

After my work in the Civil Rights Division, I worked at a private law firm handling administrative hearings and litigation in Federal court, doing a variety of litigation. From private practice, I then returned to the Department of Justice and worked in the Civil Division under Harlington Wood, now circuit judge on the seventh circuit, and Carla Hills. Again, I was quite fortunate in serving under people of that character.

I then became solicitor of the Nuclear Regulatory Commission. As chief litigator for the Nuclear Regulatory Commission, I ran an office of some 25 lawyers or so. I again handled cases throughout the Federal court system in that job, and for the last 1½ years, I have been on the Atomic Safety and Licensing Appeal Panel deciding cases.

So I think that throughout my career, I have either been a litigator or a decisionmaker, and I am comfortable that I could serve well on the Superior Court of the District of Columbia.

Senator MATHIAS. One of the important attributes of a judge is judicial temperament, and I am wondering how you define judicial temperament?

Mr. EILPERIN. I think that judicial temperament, in essence, means treating people with dignity and fairness, and with courtesy; listening to what they have to say, reserving judgment until the people who appear before you have had their say. It's that aura of just quietness, calmness, and treating people with dignity that to me is the essence of judicial temperament.

Senator MATHIAS. One of the attributes of Lord Nelson, which contributed to his reputation as a great admiral, was that he spent a great deal of time with the midshipmen, talking with them about naval tactics, about philosophy, about life, and it has always occurred to me that the same qualities are important in a judge. He has to be willing to play a part in the continuing education of lawyers, particularly young lawyers, and I wonder what your view is of the proper role and responsibility of the bench in the ongoing education of the bar?

Mr. EILPERIN. I agree with that, Senator. I recollect, when I was law clerk to Judge Metzner, that when a jury had returned its verdict and the case had been completed, Judge Metzner would often call the lawyers back into his robing room or his chambers to discuss matters of trial strategy and to compliment them on aspects of their presentation that he thought had gone especially well. I think that is a very useful function for a judge to perform. I would hope to be able to do that if I am confirmed to serve on the superior court.

Senator MATHIAS. Well, I am glad to hear that. Of course, there are also different styles that judges employ. I experienced some of them in the time in which I was earning a living as a lawyer. There is one style in which the judge will blast the young lawyer in the courtroom in the presence of the jury, his clients, and the public at large. There is the other style which was emulated by a great judge we had in Maryland, Judge Prescott, who used to call the lawyers to the bench and quietly admonish them or advise them. One of the ways he would approach admonishment was to say that it was a new point of law he hadn't heard of before and he wanted to hear more about it. But it is an important role for the court.

Mr. EILPERIN. I certainly agree, and I don't think a judge should ever publicly embarrass any litigant or any person who comes before him.

Senator MATHIAS. Before we close, do you have anything further you would like to say?

Mr. EILPERIN. I just want to thank you for your graciousness, and I want to thank the committee staff, Miss Margaret Hecht, Miss Eileen Mayer, and Miss Peggy Crenshaw, for their courtesy and also for their unerring sense of direction in shepherding my family and myself over here from the Dirksen Senate Office Building.

Senator MATHIAS. Is there anyone else who wants to say anything with respect to this nomination?

There being no one who volunteers, the committee will stand in adjournment.

Mr. EILPERIN. Thank you, Senator.

[Whereupon, at 3:10 p.m., the committee recessed, to reconvene subject to call of the Chair.]

O